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NO. 88-1346

Supreme Court, U.S.
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In the
Supreme Court of the United States
OCTOBER TERM, 1988

ALBERT MORELLA AND LESTER ANTHONY
Petitioners

VERSUS

COOPER/T. SMITH, INC. AND THE GENERAL TRUCK DRIVERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS LOCAL NO. 270, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, INDEPENDENT
Respondents

ON WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

BRIEF FOR RESPONDENTS IN OPPOSITION

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STATEMENT OF THE CASE

This suit arose out of the June 10, 1986 layoffs of Petitioners Albert Morella and Lester Anthony ("Petitioners") by their former employer, Cooper/T. Smith Stevedoring Co., Inc. ("Cooper"). At the time of their layoff, there was a collective bargaining agreement in effect between Cooper and the Teamsters Local Union No. 270 ("Union") governing the terms and conditions of Petitioners' employment. Following their layoffs on June 10, 1986, Petitioners both filed grievances pursuant to the contract's grievance and arbitration procedure alleging that Cooper had subcontracted work and, as a result, laid off Petitioners in violation of the contract. These grievances

were submitted to a Joint Grievance Committee on November 12, 1986, and on November 14, 1986, the Joint Grievance Committee issued its decision denying Petitioners' grievances. Under the finality provision of Article XI, Section 3, of the collective bargaining agreement, this decision was final and binding upon the parties.

On May 6, 1987, Petitioners filed a complaint against Cooper under Section 301 of the Labor-Management Relations Act, 29 U.S.C. §185 *et seq.*, alleging that Cooper had violated the collective bargaining agreement by laying off Petitioners as a result of the subcontracting out of work in violation of the contract. In response, Cooper filed a Motion for Summary Judgment and Sanctions under Rule 11 on the basis that Petitioners' breach of contract claim was barred by the decision of the Joint Grievance Committee previously rendered pursuant to the contract's grievance and arbitration procedure. Thereafter, on July 16, 1987, and prior to a ruling on Cooper's Motion for Summary Judgment and Sanctions, Petitioners filed an amended complaint in which they added the Union as a defendant, and added a new claim that the Union had breached its duty of fair representation in connection with its handling of the hearing before the Joint Grievance Committee. New and additional allegations were also asserted alleging that Cooper had made arguments at the Joint Grievance Committee hearing that lacked merit and were therefore incorrectly relied upon by the Joint Committee in denying Petitioners' grievances.

In response to the amended complaint, Cooper and the Union jointly filed a Motion to Dismiss Amended Complaint on the grounds that the breach of duty of fair representation allegations were time-barred, and that there was therefore no basis for Petitioners to relitigate against Cooper the merits of the final and binding Joint Committee

award. The district court granted Cooper's and the Union's Motion, dismissing the suit in its entirety. On appeal, the decision of the district court was affirmed by the United States Court of Appeals for the Fifth Circuit. Motions for Rehearing and Rehearing En Banc were subsequently denied.

REASONS FOR DENYING WRIT

I. The Decision Below Neither Addressed Nor Decided The Question Presented

The predominant Question Presented in the petition appears to be whether an aggrieved employee must sue, as parties, both his employer and his union when asserting a "hybrid §301/duty of fair representation" claim. Contrary to Petitioners' suggestion, however, the court below[1] neither addressed nor decided that question.

The sole issue before the district court on Cooper's and the Union's Joint Motion to Dismiss was whether Petitioners had timely asserted an unfair representation claim such that their "hybrid §301/duty of fair representation" claim could properly be maintained. Petitioners initially filed on May 6, 1987, a breach of contract action alleging that Cooper had breached the collective bargaining agreement by laying off Petitioners on June 10, 1986. Subsequently, on July 16, 1987, Petitioners filed an amended complaint alleging for the first time that the Union had breached its duty of fair representation in connection with an adverse arbitration award issued on November 14, 1986, some eight months earlier. In dismissing the unfair representation

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[1] Reference to the court below refers to the decision of the district court, which was summarily affirmed by the Fifth Circuit Court of Appeals.

representation claim, the court below held that the assertion of the unfair representation claim was untimely, and further, that the unfair representation claim did not relate back to the earlier filing of the breach of contract claim. Moreover, since the unfair representation claim was time barred, the court went on to hold that the merits of the underlying breach of contract claim could not be reached. Accordingly, the court dismissed both the unfair representation claim and the breach of contract claim.

It is readily apparent from the decision below that the Question Presented in Petitioners' petition–whether an aggrieved employee must sue, as parties, both his employer and his union to successfully assert a hybrid §301/unfair representation claim–was simply not an issue bearing on the disposition of this case. The fact that Petitioners did in fact sue as parties both their employer and their union when they asserted their hybrid §301/unfair representation claim makes this abundantly clear. It is respectfully submitted that review by this Court of the Question Presented in Petitioners' petition would therefore be inappropriate inasmuch as the Question Presented was not an issue addressed or decided by the court below.

II. The Decision Below Was Decided Consistent With Well-Established Jurisprudence

It is well settled that individual employees seeking to bring suit against their employer for breach of a collective bargaining agreement must first exhaust any grievance or arbitration remedy provided in the contract. *Clayton v. International Union*, 451 U.S. 679 (1981); *Republic Steel Corp. v. Maddox*, 379 U.S. 650 (1965). If the employee's grievance is processed through a grievance procedure that is final and binding under the contract, he is bound by the results of that procedure and may not then relitigate the

merits of his grievance in court. *Hines v. Anchor Motor Freight, Inc.*, 424 U.S. 554 (1976). An exception to this rule, however, allows an employee to go behind and, in effect, vacate the arbitration award where he also alleges and demonstrates that his union's breach of its duty of fair representation "seriously undermine[d] the integrity of the arbitral process." *United Parcel Service, Inc. v. Mitchell*, 451 U.S. 56, 61 (1981); *Vaca v. Sipes*, 386 U.S. 171 (1967). The assertion of both a breach of contract claim and an unfair representation claim in such a fashion has come to be known as a "hybrid §301/duty of fair representation" action, for which a six-month statute of limitation applies. *See Del Costello v. Teamsters*, 462 U.S. 151 (1983).

In the instant case, and consistent with the above principles, the court below held that because Petitioners had failed to assert their unfair representation claim within six months of the issuance of the arbitration award, their unfair representation claim was time barred. The court further held that because the breach of contract claim and the unfair representation claim involved different legal theories and different conduct of different parties occurring at different times and places, the filing of the unfair representation claim did not relate back to the earlier filing of the breach of contract claim within the purview of Rule 15(c), F.R.C.P. Finally, since the unfair representation claim had not been timely asserted, the court concluded that Petitioners could not maintain their breach of contact claims in the face of the binding arbitration award.

In light of the above, it is apparent that the decision below simply applied existing law to the facts and arrived at a conclusion entirely consistent with well-established doctrine. Inasmuch as the decision of the lower court presents no conflict with existing jurisprudence, review of the case is not warranted.

CONCLUSION

For the above reasons, the petition for writ of certiorari should be denied.

Respectfully submitted,

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CERTIFICATE

I hereby certify that on this 5th day of April, 1989, I served a copy of the above and foregoing Brief For Respondents In Opposition by placing in the United States mail, postage prepaid, upon:

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